

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant(s):	Mary Ann Hettich		
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Examiner:	Hoey, Alissa L.		
Title:	UNIVERSAL CHAP-STYLE COMPRESSION STOCKING		
Docket No.:	038316/269234		
Customer No.:	00826		

Commissioner for Patents
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APPEAL BRIEF UNDER 37 CFR § 41.37

This Appeal Brief is filed pursuant to the Notice of Appeal filed August 10, 2006.

1. ***Real Party in Interest.***

The real party in interest in this appeal is BSN-Jobst, the assignee of the above-referenced patent application.

2. ***Related Appeals and Interferences.***

There are no related appeals and/or interferences involving this application or its subject matter.

3. ***Status of Claims.***

The present application currently includes Claims 1–7, which all stand rejected.

4. ***Status of Amendments.***

There are no unentered amendments in this application.

5. ***Summary of Claimed Subject Matter.***

The claimed invention is directed to a therapeutic gradient compression stocking capable of being worn on either leg of a person. The stocking includes a foot portion **12**, a leg portion **14**

having a lower leg portion 16 and an upper leg or thigh portion 18, a waist support 20, and a hip portion 22 extending between the waist support and the upper leg portion. See FIGS 1, 2, and 7 and paragraph [026], lines 3–6. The hip portion 22 has cutouts 24, 24' on each side of the hip portion, and the cutouts are sized to accommodate the lower waist of the wearer, such as the crotch area of the patient, so that the stocking may be worn on either leg. See FIGS 3 and 4 and paragraph [027], lines 5, 7, and 8. The waist support portion is constructed so as to accommodate a fastener surrounding the waist of a patient so that the stocking may be worn on either leg. See FIGS 5 and 6. For example, in one embodiment, the therapeutic stocking is held in place by a waist support or waistband 20 that has a strap-engaging loop 26 formed at the top of the hip portion 22 and extending around that portion of the circumference of the hip panel 20 at the front and rear of the panels but not above the cutouts 24, 24'. See FIGS 5–7 and paragraph [029], lines 4–5 and 9–10. The exemplary strap-engaging loop 26 is formed in a manner to accommodate a belt type construction that can be slid from the left to the right or the right to the left, allowing the patient to wear the stocking on either leg. See FIGS 5 and 6, paragraph [029], lines 7–10.

6. ***Grounds of Rejection to be Reviewed on Appeal.***

(i) Claims 1–7 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Russell (U.S. Patent No. 3,440,665, hereinafter “Russell”) in view of Fregeolle (U.S. Patent No. 3,975,929, hereinafter “Fregeolle”).

7. ***Argument.***

The claimed invention is directed to a chap-style therapeutic gradient compression stocking that is constructed such that it may be worn on either leg. The compression stocking includes a foot portion, a lower leg portion, an upper leg portion, a waist support, and a hip portion extending between the waist support and the upper leg portion. The hip portion is formed around the lower waist of the patient and has two cutouts (24, 24'), as illustrated in one embodiment by FIGS 1–4 of the present application, on each side of the hip portion so that the stocking may be worn on either leg. The stocking is held in place by the waist support. For

example, the waist support may include a strap-engaging loop formed at the top of the hip portion, wherein a waist strap passes through the strap-engaging loop.

A. Brief Summary of Argument

Applicant respectfully submits that Russell and Fregeolle do not alone, or in combination, teach or suggest the claimed invention. Russell discloses in FIG 1 a unitary article of feminine hosiery, such as for wearing under a short skirt (Col. 1, lines 26–28), including two stockings, one stocking having one slit specifically configured to be worn on the right leg, and the other having one slit specifically configured to be worn on the left leg. Neither of these stockings has two slits, nor would two slits be needed in one leg as there is a dedicated stocking for wearing on each of the right and left legs. Also, Russell teaches that turning one of the stockings inside out is sufficient to cover an opposite leg. Turning the claimed compression stocking inside out, however, is not desirable due to its heavy seams and construction.

Fregeolle discloses in FIG 1 a therapeutic thigh-length stocking. The stocking of Fregeolle is held in place by an elastic band that frictionally engages the thigh—not the waist or hips—of the wearer. Col. 3, lines 1–6. Slits or cutouts are thus not disclosed and are not necessary for allowing the stocking of Fregeolle to be used on either leg because it is not worn at the hip and waist. In fact, Fregeolle specifically teaches away from incorporating slits or cutouts into the stocking by disclosing that it eliminates the need for slitting. Col 1, lines 35–36 and Col. 5, lines 33–35 (“The present stocking eliminates the need for slitting the stocking in a walewise direction downwardly from the upper end . . .”)

One wouldn’t combine Fregeolle’s single stocking with Russell’s feminine hosiery because its lack of any slit would disallow its use above the thigh. This would interfere with Russell’s intent to provide an attractive feminine hosiery that could be worn with relatively short skirts. Also, according to Fregeolle, adding such a slit would be undesirable.

Furthermore, even if Russell and Fregeolle are (inappropriately) combined, the combination would fail to teach the claimed invention. At best, Fregeolle’s thigh-length stocking may be slit once (according to Russell) to accommodate one hip, but the same stocking wouldn’t be useable for both legs (due to the lack of the second slit) without turning the stocking inside out and exposing the wearer to the heavy seam of the compression stocking.

The rejection of independent Claim 1 and the claims depending from Claim 1 as unpatentable over Russell in view of Fregeolle is therefore improper and should be withdrawn. Applicant thus respectfully submits that the rejections have been traversed and that Claims 1-7 are presently in condition for allowance.

B. There is no suggestion or motivation to modify or combine Russell and Fregeolle.

The disclosure of Russell provides no suggestion or motivation to modify the article of hosiery of Russell for wearing on one leg or to combine the hosiery of Russell with the therapeutic compression garment of Fregeolle. As such, the combination of Russell and Fregeolle is improper.

1. Russell provides no motivation to wear the hosiery on one leg only.

Russell is directed to a garment comprising a pair of stockings each having leg 12, hip 13, and waist 14 portions with the waist portions 14 united at their ends by hook members 40 each permanently secured to one end 32 of a waist portion and releasably secured to an adjacent end 33 of the other waist portion, and to stockings adapted to form part of such a garment. Col. 1, lines 35-40. The upper parts of the stockings are open by slitting the upper portion of each stocking at a side facing the open side of the other stocking so that the open areas are at the interior of the garment, as shown in FIGS 1 and 2. Col. 2, lines 17-21. In this way, a panty-less hosiery is provided as an alternative to pantyhose that covers not only the legs but the thighs of the wearer yet still allows the convenience of slipping off or down panties independently of the hosiery. Col. 1, lines 27-32.

As hosiery that is meant to be used for "the wearing of higher and higher skirts," the use of only one stocking is neither suggested nor expected by the disclosure of Russell. Col. 1, line 25. In fact, the very structure of the hosiery of Russell is such that even if one wanted to wear only one of the pair of stockings, it would be impossible. The waist portions 14, 18 of each stocking are permanently affixed to the hip portions 13, 17, with the ends 26, 27, 28, 29 provided for allowing fastening member 40 of one stocking to hook onto loop 33 of the other stocking in the front and rear of the hosiery, thereby uniting the two waist portions into a unitary waist 7. See FIGS 1-4 and Col. 2, lines 32-39 and 50-56. However, the use of one stocking alone would require the fastening member 40 to hook onto loop 33 of the same stocking. As seen in FIG 2,

such a configuration is clearly unworkable as it would require the wearer's waist to have approximately the same circumference as one of the wearer's thighs.

The application and the structure of the hosiery in Russell therefore in no way suggest or imply that the pair of stockings be separated such that only one of the pair be worn on only one of the wearer's legs.

2. Russell provides no motivation to combine with the therapeutic compression garment of Fregeolle.

The hosiery of Russell, as previously discussed, is meant to be worn as an appealing leg covering, such as in combination with a short skirt. Col. 1, lines 25–28. In fact, Russell states that in constructing the hosiery, hip portions formed of heavier yarn are to be constructed in such a manner as to make the bands invisible to a casual observer or at any significant distance so that they do not affect the appearance of the stocking when worn or the appeal of the stocking when displayed for purchase. Col. 3, lines 39–43. Thus, Russell makes no mention of the hosiery being worn for other than aesthetic/fashion-related reasons.

In addition, imparting therapeutic compression functionality to the hosiery of Russell would be unworkable considering the flexibility of forming a single article of hosiery out of a pair of stockings. Russell discloses that one of the pair of stockings may be turned inside out for easy interchangeability of stockings from different pairs. Col. 2, lines 65–67. In other words, one stocking of a pair may be turned inside out and used with one stocking of a different pair to form a “new” article of hosiery having a pair of stockings. However, if the stockings were constructed to provide therapeutic compression, turning one of the stockings inside out would cause the stocking to be uncomfortable to a wearer, for example as a result of seams that would irritate the wearer.

Thus, the goal of Russell to provide an aesthetically-pleasing article of hosiery that provides flexibility in matching two stockings from any two pairs of hosiery to form a “new” article of hosiery provides no motivation to combine Russell with the therapeutic compression garment of Fregeolle.

3. Fregeolle teaches away from incorporating cutout portions in the therapeutic compression garment of Fregeolle.

Fregeolle discloses a thigh-length anti-embolism stocking including a leg portion having

an enlarged upper section 10 and a lower leg portion 11 with a foot 12 including a heel pocket 13 and a toe pocket 14. The upper end of the leg of the stocking is provided with an upstanding and integrally knit extension 16 which extends substantially one-half the distance around the upper end of the stocking. See FIG 1 and Col. 2, lines 38-41 and 43-46. The upper end of the stocking is supported on the leg of the wearer by beads 23 that frictionally engage the leg. FIG 1 and Col. 3, lines 4-6. The stocking of Fregeolle, as a thigh-length stocking, is designed to eliminate the need for slitting the stocking in a walewise direction downwardly from the upper end and sewing in an insert in this portion of the stocking. Col. 5, lines 34-36 and Col. 1, lines 34-36.

As a thigh-length stocking, the stocking of Fregeolle does not require any slitting or cutout portions to fit the stocking to the leg of the wearer. Rather, a narrow elastic band 20 extends around a portion of the upper end of the leg of the stocking and from one side of the extension 16 to the other, as shown in FIG 2. Col. 2, lines 55-56. Beads 23 or rows of frictional gripping material are provided on the inside of band 20 to support the stocking on the wearer's leg. As such, slits or cutout portions are unnecessary and would in fact render the thigh-length stocking inoperable by interrupting the supporting structure created by the cooperation of extension 16 and elastic band 20. See FIGS 1 and 2.

Furthermore, Fregeolle specifically teaches away from incorporating slits or cutouts in the therapeutic compression garment by making it an object of the invention to provide a stocking that does not require slitting to construct. Therefore, combining Fregeolle with Russell, which includes one slit 21, 22 on each stocking 5, 6, would directly contradict the teachings of Fregeolle.

Because Russell provides no motivation to wear the hosiery on one leg only and fails to teach or suggest combining the hosiery with a therapeutic compression garment, and because Fregeolle teaches away from incorporating cutout portions in the therapeutic compression garment, there is no suggestion or motivation to modify or combine Russell and Fregeolle.

C. Even if Russell and Fregeolle were inappropriately combined, neither reference, taken separately or in combination, teaches the claimed invention.

Claim 1 of the present invention recites a single gradient compression stocking including a hip portion having two cutout portions, such that the stocking may be worn on either leg, and a

waist portion constructed to accommodate a fastener surrounding the patient's waist. For example, two cutout portions **24, 24'** of the embodiment of FIGS 1-4 of the present application are shown. The two cutout portions are on generally opposite sides of a single stocking, allowing the stocking to be switched from being worn on the right leg (FIG 1) to the left leg (FIG 2).

Both Russell and Fregeolle fail to teach or suggest each and every limitation of independent Claim 1. Russell does not teach or suggest a single therapeutic gradient compression stocking that may be worn on one leg and is interchangeably worn on the other leg. Fregeolle does not teach a therapeutic gradient compression stocking having a waist portion and two cutout portions. Even if Russell and Fregeolle are combined, the combination does not teach a stocking having two cutout portions, such that the stocking may be worn on either leg, and a waist portion. Thus, neither reference, taken alone or in combination, teaches the claimed invention.

1. Russell does not teach or suggest a single therapeutic gradient compression stocking that may be worn on either leg.

Russell teaches an article of hosiery including a pair of attachable stockings **5, 6**, as illustrated in FIG 1, wherein each individual stocking leg includes only one slit 21 (for the right-legged stocking), **22** (for the left-legged stocking) located such that when attached the single slit provides room for the crotch and upper thigh. As such, Russell does not teach a single stocking with two cutout portions.

Russell's stockings **5** and **6** are united to form a single article of hosiery that is worn on both legs at the same time. In Russell a different stocking is specifically configured for the right and the left leg. FIG 1 and Col. 2, lines 22-28. Any attempt to place the left leg stocking **6** of Russell on the right leg would force the left-leg foot portion **11** to be reoriented backwards and left leg stocking **6** would not fit the right foot. In addition, the right leg stocking **5** would not fit the left foot if worn on the left leg. Otherwise, if the left leg stocking **6** were to be worn on the right leg while preserving the orientation and fit of the leg portion **11**, and if the same were done with the right leg stocking **5**, the article of hosiery would be rendered non-functional. This is because the slits **21, 22** would now be at the exterior of the garment, the slits would no longer form an open area at the crotch, and the fastening members **40** of each waist portion **14, 18**

would no longer be in a position to extend around the waist to support the garment by hooking into the respective loop 33 of the other stocking. See FIGS 2 and 3. The rejection is thus incorrectly attempting to equate a pair of stockings 5, 6 wherein each single stocking has a single slit 21, 22 configured for use on a single left or right leg, with a single gradient compression stocking having two cutouts such that the single stocking may be worn on either leg.

Russell does suggest "easy interchangeability" of stockings from different pairs by turning one of them inside out. Col. 2, lines 65-67. However, the compression stocking of Claim 1 of the present application has two cutout portions allowing it to be worn on either leg with the foot portion still fitting and without having to turn the stocking inside out. Turning a stocking inside out can expose the wearer to uncomfortable seams or welts meant to be on the outside of the stocking.

Furthermore, the stockings disclosed in the Russell reference do not include a waist portion surrounding the user's waist. As shown in FIG 2 of Russell, each individual stocking 5 or 6 has only enough length in the waist portion 14 or 18 to extend half way around the wearer's waist. To extend the whole way around a waist, both stockings 5 and 6 must be combined with attachment of waist portion 14 or 18 via fastening members 40 and loops 33. In other words, the fastening member 40 of each waist portion 14, 18 hooks into the loop 33 of the other waist portion 14, 18 in the front and in the rear such that a unitary waist 7 is formed. Col. 2, lines 49-55. Because Russell discloses only a dual-stockings system, there is no need for one of the stockings 5 or 6 to have its waist portion 14 or 18 extend entirely around the wearer's waist. In fact, a longer waist portion in Russell would result in the combined waist portions 14 and 18 forming a unitary waist 7 that is too loose to fit the wearer. As a result, Russell does not teach or suggest Claim 1 of the present application.

2. Fregeolle does not teach or suggest a stocking that includes a hip portion, a waist portion, or two cutout portions.

The Fregeolle reference discloses a gradient compression stocking having an enlarged upper section 10, a lower leg portion 11, and a foot 12, as shown in FIG 1. However, Fregeolle fails to teach or suggest a hip portion, a waist portion, or two cutout portions on each side of a hip portion.

Fregeolle describes the stocking as being only a "thigh length" elastic stocking in

Fregeolle's Claim 1. *See also* Col. 1, lines 34–35. The stocking of Fregeolle is not designed to extend all the way up to the hip. Even if an attempt was made to extend the stocking to the hip of a wearer, the lack of any cutout portion would cause the stocking to bunch up at the crotch.

Furthermore, the elastic band 20 extends from one end of the extension 16 to the other such that the combined circumference of the elastic band 20 and the extension 16 is sized to be the same circumference as that of the upper section 10 and therefore would not be large enough to extend around a waist that is much larger in diameter than a thigh. FIG 2 and Col. 2, lines 55–57. In addition, the lower edge of the elastic band 20 is attached to the upper edge of the stocking leg such that the circumference of the elastic band 20 is dependent on the circumference of the upper section 10. Col. 2, lines 61–63. One therefore would have to tear away the elastic band 20 before extending it around the waist. The elastic band 20 would then no longer hold up the stocking's upper section 10. Fregeolle therefore also fails to disclose a waist portion for surrounding a wearer's waist. As a result, Fregeolle does not teach or suggest Claim 1 of the present application.

3. Combining Russell with Fregeolle does not teach or suggest a therapeutic gradient compression stocking with two cutout portions.

Even if the combination of Russell with Fregeolle were proper, the combination of Russell with Fregeolle would not teach or suggest the claimed invention. Combining Russell with Fregeolle would at best result in a compression stocking with a single slit for one hip and an elastic band not long enough to extend around a wearer's waist.

Russell discloses only a single slit in each individual stocking and not two cutout portions. Col. 2, lines 16–20. The waist portion 14, 18 disclosed by Russell and the elastic band 20/extension 16 combination disclosed by Fregeolle are both too short to extend around the wearer's waist. Russell, Col. 49–56 and Fregeolle, Col. 55–63. Thus, the combination of Russell and Fregeolle would at best result in a compression stocking with only one slit.

None of the remaining cited references appear to overcome the failure of Russell and Fregeolle to teach or suggest Claim 1. The remaining Claims 2–7 depend from, and further patentably distinguish, Claim 1. The rejections of Claims 1–7 under 35 U.S.C. § 103(a) have therefore been overcome and the rejections should therefore be withdrawn.

D. Conclusion

Since the combination of the cited references is improper, Russell may not be combined with Fregeolle to render independent Claim 1 unpatentable. Furthermore, even if the cited references are combined, the cited references, both individually and in combination, fail to render independent Claim 1 obvious for at least the same reasons described above. Claims 2-7 depend directly from independent Claim 1 and thus include all the recitations of the independent claim. Therefore, dependent Claims 2-7 are patentable for at least those reasons given above for the independent claim.

Accordingly, for all the reasons stated above, Applicant respectfully requests that the rejections of Claims 1-7 be reversed.

8. ***Claims Appendix.***

The claims currently on appeal are as follows:

1. (Original) A therapeutic gradient compression stocking comprising a foot portion, a leg portion having a lower leg portion and an upper leg portion and a waist support spaced above said leg portion and a hip portion extending between said leg portion and said waist support portion, said hip portion having a cutout portion on each side of said hip portion sized to accommodate the lower waist of the wearer so that the stocking may be worn on either leg; and said waist portion constructed so as to accommodate a fastener surrounding the patient's waist, said stocking being capable of being worn on either leg of the patient.
2. (Original) The therapeutic stocking according to Claim 1 wherein said waist portion includes a strap engaging loop having a waist strap passing there through.
3. (Original) The therapeutic stocking according to Claim 2 wherein said waist strap fastens on either the left side or the right side of said strap.
4. (Original) The therapeutic stocking according to Claim 1 wherein said foot portion includes a toe opening.
5. (Original) The therapeutic stocking according to Claim 1 wherein said foot portion has a closed toe.
6. (Original) The therapeutic stocking according to Claim 1 wherein the pressure in the distal end of said stocking gradually decreases to the proximal end.
7. (Original) The therapeutic stocking according to Claim 1 wherein the hip portion extends from about 30% to 50% of the circumference of the upper opening of the stocking exclusive of said cutouts.

9. *Evidence Appendix.*

None.

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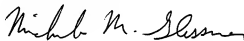
10. ***Related Proceedings Appendix.***
 None.

CONCLUSION

For at least the foregoing reasons, Applicant respectfully requests that the rejections be reversed.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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